**Placer County Water Agency**

**Middle Fork American River Project**

**(FERC No. 2079)**

**DRAFT – VERSION 6**

**Middle Fork American River Project**

**Updated Communication  
and Participation Protocols**

***(Updated To Include  
Development of Proposed New License Conditions)***



Placer County Water Agency

P.O. Box 6570

Auburn, CA 95604

July 14, 2009

**Table of Contents**

Page

[1.0 Introduction 2](" \l "_Toc233592762)

[2.0 Objective of updated protocols 2](" \l "_Toc233592763)

[3.0 Definitions 2](" \l "_Toc233592764)

[4.0 Purpose of collaborative Negotiations 2](" \l "_Toc233592765)

[5.0 Participation 2](" \l "_Toc233592766)

[5.1 Relicensing Participants 2](" \l "_Toc233592767)

[5.2 Late Participation in the Relicensing 2](" \l "_Toc233592768)

[5.3 Roles of Relicensing Participants with Independent Statutory Authority 2](" \l "_Toc233592769)

[6.0 Relicensing Website 2](" \l "_Toc233592770)

[7.0 Meetings 2](" \l "_Toc233592771)

[7.1 Types of Meetings 2](" \l "_Toc233592772)

[7.1.1 Licensee’s Meetings – General Protocols 2](" \l "_Toc233592773)

[7.1.2 Licensee’s Meetings – Additional Protocols for PM&E Discussions 2](" \l "_Toc233592774)

[7.2 Attendance at Meetings 2](" \l "_Toc233592776)

[7.3 Caucus 2](" \l "_Toc233592777)

[7.4 Preparation 2](" \l "_Toc233592778)

[8.0 Documents 2](" \l "_Toc233592779)

[8.1 Types of Documents 2](" \l "_Toc233592780)

[8.1.1 FERC’s Documents 2](" \l "_Toc233592781)

[8.1.2 Licensee’s Documents 2](" \l "_Toc233592782)

[8.1.3 Other Participants’ Documents 2](" \l "_Toc233592783)

[8.1.4 Public Review File 2](" \l "_Toc233592784)

[8.2 Single-Text Approach 2](" \l "_Toc233592785)

[9.0 Confidentiality 2](" \l "_Toc233592786)

[10.0 Personal Conduct 2](" \l "_Toc233592787)

[10.1 Respect for Participants 2](" \l "_Toc233592788)

[10.2 Commitments 2](" \l "_Toc233592789)

[10.3 Communicating Interests 2](" \l "_Toc233592790)

[10.4 Good Faith 2](" \l "_Toc233592791)

[11.0 Communications 2](" \l "_Toc233592792)

[11.1 Communications Among Relicensing Participants 2](" \l "_Toc233592793)

[11.2 Communications with FERC 2](" \l "_Toc233592794)

[11.3 Media Communications 2](" \l "_Toc233592795)

[12.0 Compliance with Updated Protocols 2](" \l "_Toc233592796)

**Figure**

Figure 1. Key Components and Process for Documenting the MFP Comprehensive Collaborative Agreement.

**List of Attachments**

Attachment A. Supplemental Stakeholder Participation Statement.

Attachment B. Schedule for Development of New License Terms and Conditions (by topic).

# Introduction

This document provides the Updated Communication and Participation Protocols (Updated Protocols) for the Relicensing of Placer County Water Agency’s (PCWA or Licensee) Middle Fork American River Project (MFP or Project). The original Communication and Participation Protocols (Protocols) for the MFP were developed at the outset of the Relicensing process to define the structure of the collaborative process and guide communication between interested Relicensing Participants. These Relicensing Participant-approved Protocols were included in the Pre-Application Document (PAD) filed with the Federal Energy Regulatory Commission (FERC or Commission) in December 2007 (PCWA 2007). At that time, the Protocols acknowledged that Relicensing Participants would review and update, if appropriate, the Protocols prior to initiating collaborative discussions on new Protection, Mitigation and Enhancement measures (PM&E Measures), also commonly referred to as new license conditions.

Interested Relicensing Participants (Communication Protocol Sub-group) discussed and reviewed several versions of the draft Updated Protocols from March-June 2009. All comments received on the draft Updated Protocols were resolved by the Communication Protocol Subgroup and incorporated, as appropriate, into the final Updated Protocols. The final Updated Protocols were provided to the Plenary on (give date) and discussed and approved at the (give date) Plenary meeting. The following provides the Plenary-approved Final Updated Protocols for use during the Relicensing of the MFP. As of (give date), this version of the protocols supersedes all previous versions.

# Objective of updated protocols

The objective of the Updated Protocols is to provide guidelines to Relicensing Participants regarding the structure of the collaborative process and guide communication between interested Relicensing Participants during the PM&E Measure Development Phase of the Relicensing of the MFP. The Updated Protocols pertain to the Licensee, governmental agencies, non-governmental organizations, Native American tribes, and unaffiliated members of the public who participate in the proceeding.

# Definitions

The following definitions apply:

* Administrative Provisions: Any provisions, other than PM&E measures, agreed to by Relicensing Participants.
* Comprehensive Collaborative Agreement: A package of recommended FERC Jurisdictional PM&E Measures and FERC Non-Jurisdictional Agreements that are agreed upon by the Relicensing Participants.
* FERC: Federal Energy Regulatory Commission.
* FERC Non-Jurisdictional Agreement: Any agreement made between the Licensee and a Relicensing Participant(s) during the course of the Relicensing process that is not subject to FERC jurisdiction
* FERC Project No. 2079 Mailing List: A mailing list of Relicensing Participants prepared and maintained by the Licensee for the Relicensing of the MFP.
* FERC Project No. 2079 Service List: A mailing list of parties that have formally intervened in the Relicensing proceeding. The mailing list is prepared and maintained by FERC *after* it accepts the License Application.
* ILP: FERC’s Integrated Licensing Process described in 18 CFR § 5.
* Licensee: Placer County Water Agency, the owner and operator of the Middle Fork American River Project (FERC No. 2079) and its negotiating team.
* Licensee’s FERC Project No. 2079 Interested Parties E-Mailing List: A list of interested parties, by e-mailing address, the Licensee has prepared and maintains for the Relicensing. The Licensee anticipates that the Licensee’s FERC Project No. 2079 Interested Parties E-Mailing List will be updated periodically with FERC’s Project No. 2079 e-mail list to keep both e-mail lists current during the Relicensing. *The Licensee’s FERC Project No. 2079 Interested Parties E-Mailing List does not consist of all interested parties on the Licensee’s FERC Project No. 2079 Interested Parties Mailing List since not all Relicensing Participants have access to e-mail.*
* Licensee’s FERC Project No. 2079 Interested Parties Mailing List: A list of interested parties, by mailing address, the Licensee has prepared and maintains for the Relicensing. The Licensee anticipates that at some time, the Licensee’s FERC Project No. 2079 Interested Parties Mailing List and FERC’s Project No. 2079 Mailing List may be consolidated into one common list.
* MFP or Project: Placer County Water Agency’s Middle Fork American River Project, FERC Project No. 2079.
* Middle Fork Project Finance Authority: The MFPFA is a joint powers authority, consisting of elected representatives of the County of Placer and PCWA, formed in accordance with a Joint Exercise of Powers Agreement whose purposes related to this protocol are to serve the mutual interests of the County of Placer and the PCWA, to provide for the financing of studies, programs, procedures, projects, services, improvements, modifications, and other costs that may be required to obtain a new FERC license or which may be completed under the current or subsequent FERC license of the MFP by PCWA with other powers as allowed by law.
* Outside Party: Any individual or organization that is not a Relicensing Participant.
* PAD: Pre-Application Document required by FERC.
* Plenary: Group of Relicensing Participants with decision-making authority.
* PM&E Discussion: Discussions by the Plenary regarding proposed Protection, Mitigation, and Enhancement Measures.
* PM&E Measures: Protection, mitigation, and enhancement measures under FERC jurisdiction.
* Process Plan and Schedule: The Relicensing Process Plan and Schedule prepared by the Licensee and included in the Licensee’s Pre-Application Document (PAD), which will be maintained and updated by the Licensee through the Relicensing.
* Rationale Statement: A report or reports documenting the rationale for PM&E Measures proposed as new license conditions to FERC.
* Relicensing: The Relicensing process for the Middle Fork American River Project, FERC Project No. 2079.
* Relicensing Participants: The Licensee and those Federal and state resource agencies, local governments, non-government organizations, Native American tribes, members of the public, and others interested in the Relicensing and represented at a scheduled Relicensing meeting or who participate in Relicensing activities.
* Technical Working Group (TWG): Focus group working on specific technical issues during the Relicensing.

# Purpose of collaborative Negotiations

The purpose of the negotiations is to reach a comprehensive written collaborative agreement among the Relicensing Participants on both FERC Jurisdictional PM&E Measures and FERC Non-Jurisdictional Agreements (Figure 1). The Comprehensive Collaborative Agreement will also include any Administrative Provisions agreed to by Relicensing Participants. As part of the collaborative negotiations, the Relicensing Participants, with guidance from FERC staff, will identify topics considered to be under the jurisdiction of FERC (PM&E Measures) and those outside FERC jurisdiction (agreements).

Once consensus is reached by the Relicensing Participants on a FERC Jurisdictional PM&E Measure, a rationale statement will be developed by the Licensee and approved by Relicensing Participants describing the technical basis and resource balancing used in developing the measure.

Once a Comprehensive Collaborative Agreement is reached, the FERC Jurisdictional PM&E Measures will be submitted to PCWA’s Board of Directors and the MFP Finance Authority Board of Directors for approval.

The FERC Jurisdictional PM&E Measures and accompanying Rationale Statement will be: (1) recommended to FERC as new license conditions in the Licensee’s Draft Application for New License to be filed in October 2010; and (2) used as the basis of conditions or recommendations issued by resource agencies. The PM&E Measures will include proposed license articles and detailed management and monitoring plans. The Relicensing Participants recognize the need for the PM&E Measures to satisfy the requirements of applicable state and federal laws.

During the early phase of the negotiations, the Relicensing Participants will identify a list of potential issues/interests that are outside of FERC jurisdiction to be discussed. Discussions on these FERC Non-Jurisdictional issues may be conducted during Plenary meetings or in separate meetings between the Licensee and specific Relicensing Participants depending on the issue and desires of the parties involved. However, regardless of the meeting venue, all Relicensing Participants will be informed of the details of any FERC Non-Jurisdictional Agreement reached between the parties. These FERC Non-Jurisdictional Agreements will be developed within the context of the overall Comprehensive Collaborative Agreement. If deemed necessary by both parties, once consensus is reached by Licensee and a Relicensing Participant(s) on a FERC Non-Jurisdictional issue, a rationale statement will be developed by the Licensee and approved by the Relicensing Participant(s) describing the technical basis and resource balancing used in developing the measure. Once a Comprehensive Collaborative Agreement is reached, the FERC Non-Jurisdictional Agreements, if any, would be submitted to PCWA’s Board of Directors and the MFP Finance Authority Board of Directors for approval.

# Participation

## Relicensing Participants

Participation in the Relicensing proceeding is open to Federal and state resource agencies, local governments, non-government organizations, Native American tribes, members of the public, and others having an interest in the Relicensing. To facilitate communication, governmental agencies and non-governmental organizations (NGO) are encouraged to designate one individual and one alternate to represent them during the Relicensing proceeding. The individuals designated as the representative for an agency or organization will be the point of contact for Relicensing correspondence and are responsible for keeping their respective organizations and constituencies informed of Relicensing activities. The individual so identified is expected to have the authority to speak on behalf of the organization.

Relicensing Participants will clearly identify who they represent at the beginning of each meeting and if they represent more than one entity, all organizations will be identified. Participation by members of the media, in their official capacity, is discouraged during the PM&E Measure Development Phase. The intent of the license condition discussions is to allow the Relicensing Participants to fully explore and evaluate a range of potential PM&E Measures in an open and transparent forum without concerns that these initial discussions or proposals will be reported in the media or attributed to specific Relicensing Participants. Media members that attend any meeting, in their official capacity, must notify the Relicensing Participants of their affiliation and intent at the beginning of any Licensee-sponsored meeting.

## Late Participation in the Relicensing

Relicensing Participants who begin participating in the Relicensing after commencement of the Relicensing are expected to get themselves informed and “up-to-speed” with the rest of the Relicensing Participants. Absence or late or delayed participation will not be allowed to disrupt the process. Upon first contact with new Relicensing Participants, the Licensee will offer the new participant a copy of the Updated Protocols and direct them to the PAD on the Project webpage. Upon request, the Licensee will provide individuals who begin participating in the relicensing after the proceeding has commenced a brief overview of the proceeding, key decisions to date, and layout of the webpage where relicensing material is maintained. Confidential material will be provided to the participant, if appropriate, according to guidelines specified in the Updated Protocols. Questions about past work, decisions, or status of the relicensing process should be directed to the Licensee.

## Roles of Relicensing Participants with Independent Statutory Authority

Certain Relicensing Participants administer statutory authorities that may constrain participation in development of PM&E Measures. The Updated Protocols do not modify the rights or duties of any such Relicensing Participant. Federal agencies with mandatory conditioning authority will participate in the Relicensing process with the goal of reaching consensus on proposed PM&E Measures but will retain their independent statutory authority to condition the license.

The State Water Resources Control Board (State Water Board) has authority to grant, waive, or deny water quality certification as provided under Section 401 of the federal Clean Water Act (Water Code § 13160; 33 U.S.C. § 1341). The State Water Board and its staff are not Relicensing Participants within the meaning of that term in the Updated Protocols, but its staff will provide input to the analysis of proposed PM&Es Measures that may lead to consensus among the Relicensing Participants. The staff of the State Water Board will provide input to the collaborative sessions regarding development of new license conditions that comply with water quality standards and other applicable state law. The Relicensing Participants anticipate that if the proposed PM&E Measures and associated Rational Statement adequately addresses concerns raised as part of the collaborative process by the State Water Board staff, and all other Relicensing Participants approve the proposed PM&E Measures, these measures are likely to form the basis of the State Water Board’s approval. State Water Board staff may provide comments in writing to the collaborative, if in the judgment of State Water Board staff, the proposed PM&E Measures do not comply with the water quality standards or other applicable laws. The Relicensing Participants agree and understand that the role of the State Water Board staff is solely a guidance role during these discussions and that State Water Board staff retain the discretion to modify or otherwise alter any PM&E measure when recommending conditions for approval by the State Water Board. The State Water Board is not bound in any manner to accept the terms of any collaborative agreement.

Additional supplemental stakeholder participation statements are provided in Attachment A.

# Relicensing Website

The Licensee has established and plans to maintain a publicly-accessible Internet website as a means of making Relicensing information readily available to Relicensing Participants. The Licensee has posted or anticipates posting the PAD, meeting notices/agenda, meeting summaries, public documents sent and received, reference materials, the Process Plan and Schedule, and other Relicensing information on the website. However, communications, materials, and documents developed to inform Relicensing Participants during PM&E discussions will not be posted on the website. The Middle Fork American River Project Relicensing website can be accessed at http://relicensing.pcwa.net.

# Meetings

Relicensing Participants will sign in at the beginning of the meetings to record who is at the meetings and their representation. Meetings will begin with introductions of all participants including who they represent.

## Types of Meetings

FERC’s regulations require that certain meetings be conducted, and the Relicensing Process Plan and Schedule identifies several of these meetings. The Integrated Licensing Process (ILP) regulations stipulate that some of these meetings are the responsibility of FERC and some are the responsibility of the Licensee. In addition to the required meetings, the Licensee anticipates that other meetings will be needed, particularly during development of study plans, and potential protection, mitigation, and enhancement measures. The Updated Protocols apply only to meetings sponsored by the Licensee.

### Licensee’s Meetings – General Protocols

* Notice/Agenda – The Licensee anticipates that it will provide notice for meetings not specifically required by the regulations (e.g., study plan development meeting), principally via e-mail using the Licensee’s FERC Project No. 2079 Interested Parties E-mail List and on the Licensee’s Relicensing website. The Licensee-sponsored Relicensing meetings will generally be scheduled with the consensus of the Relicensing Participants present. The Licensee will develop an agenda for upcoming meetings based on input from the Relicensing Participants at the previous meeting and will provide it to Relicensing Participants at least seven days ahead of the meeting. The last agenda topic prior to adjourning a Relicensing meeting will always be to identify agenda topics for the next scheduled meeting. Relicensing Participants may request items be added to a meeting agenda.
* Meeting Moderation – The Licensee anticipates that they will lead the Licensee’s meetings and a third-party facilitator will be responsible to assure that all Relicensing Participants are heard. The Relicensing meetings will reflect the Licensee’s commitment to conduct an open and transparent process with a free exchange of information and interests.
* New Participants – At Relicensing meetings, the facilitator will ask all first time participants to identify themselves and their interest.
* Meeting Summaries – The Licensee will prepare a memo summarizing each Relicensing meeting to assist Relicensing Participants. The purpose of the memo is to summarize decisions and action items committed to at the meeting for reference in future meetings and for review by those who could not attend the meeting. This memo is not intended to be a transcript of the meeting or meeting notes or to state the position of any Relicensing Participant. The Licensee will distribute such meeting summaries via e-mail using the Licensee’s FERC Project No. 2079 Interested Parties E-Mailing List and post all meeting notices and summaries on the Project website with one exception. Meetings summaries regarding PM&E discussions will not be posted on the Project website. One of the first agenda items at each Licensee-sponsored meeting will be the review and approval of the most recent meeting summary.
* Use of Facilitator – The Licensee will use an independent third-party neutral facilitator for the Plenary and Technical Working Group meetings. If requested, the Licensee will provide a neutral facilitator for the other Licensee-sponsored meetings.
* Decision Making – Relicensing Participants are expected to make a good faith effort to make decisions and reach agreement by consensus among the Relicensing Participants present at any scheduled Licensee-sponsored Relicensing meeting. Consensus means that all Relicensing Participants to a given decision can “live with” the decision. For all major decisions the Relicensing Participants make, the moderator/facilitator will call the decision to question, asking each participant if they can live with the decision. Relicensing Participants are expected to “speak-up” and respond to all decisions that are put to question. Unless otherwise indicated, all decisions made by Relicensing Participants are considered interim decisions subject to further discussion and modification based on new information. All decisions and agreements of Relicensing Participants will be documented in writing and be used to update any Relicensing Participant who misses a meeting about key decisions or agreements.
* Dispute Resolution – If consensus regarding a particular issue is not achieved after reasonable efforts, then the issue will be considered to be in dispute. If the parties cannot move past the dispute, then the Licensee will document the dispute and present it to the Plenary Group for resolution. The Licensee’s obligation in this situation is to keep an accurate record of the thread, parties, issues and important milestones regarding the dispute. If the Plenary Group cannot find a solution to a FERC Jurisdictional issue, then the Plenary Group may request assistance from FERC’s formal dispute resolution team. Any unresolved disputes will be documented in the formal record and submitted to FERC.

### Licensee’s Meetings – Additional Protocols for PM&E Discussions

A specific process objective of the MFP Relicensing is to complete the study phase and analytical tool development early in the process to provide sufficient time for the Licensee and the Relicensing Participants to fully evaluate Project effects and collaboratively develop proposed new license conditions. As discussed in Section 4.0, the purpose of the negotiations is to reach a comprehensive written collaborative agreement among the Relicensing Participants on both FERC Jurisdictional PM&E Measures and FERC Non-Jurisdictional Agreements (Figure 1). The following outlines additional elements of the collaborative process during the PM&E Measure Development Phase. It should be noted that all other sections of this document (Updated Protocols) are in effect during the PM&E Measure Development Phase.

Meetings – To facilitate discussion on proposed new PM&E Measures, the Licensee will sponsor a series of Plenary meetings in 2009-2010. These Plenary meetings will be organized and scheduled on a topic-specific basis, based on the completion of technical studies. The discussion will be prioritized to first address issues under FERC jurisdiction, followed by FERC Non-Jurisdictional issues. Attachment B provides the initial schedule for these collaborative discussions. The schedule may be modified by the Licensee, in collaboration with the Relicensing Participants, based on progress of the discussions during 2009 and 2010.

Briefing Documents – The Licensee will develop and distribute a series of topic-specific Briefing Documents to interested Relicensing Participants at least one week prior to initiating PM&E discussions. Each participant is expected to make a good faith effort to review the Briefing Documents prior to participating in the PM&E discussions. The topic-specific Briefing Documents will present key information and analysis from existing technical study reports and other Relicensing documents developed for MFP Relicensing. Additional information or analyses may be added to the Briefing Document at the request of Relicensing Participants. The Briefing Documents are not intended to confine the PM&E discussions or limit consideration of detailed information presented in the MFP Technical Studies. Rather, the Briefing Documents are intended to serve as an aid to organize the information necessary for time efficient PM&E discussions.

Decision-Making – All the decision-making protocols described in Section 7.1.1 remain in effect during the PM&E Measure Development Phase of the Relicensing. The following identifies additional protocols that will be in effect during this phase of the Relicensing.

* At the start of the PM&E Measure Development Phase, each organization will appoint a Lead Negotiator to take the lead role in collaborating on proposed new PM&E Measures during Plenary meetings. This individual will serve as the primary spokesperson for their organization during the PM&E discussions, drawing on input from other Relicensing Participants for technical support as necessary. In addition, the Lead Negotiator is responsible for keeping their organization well informed throughout the PM&E Measure Development Phase. To the extent possible, organizations should strive to maintain a consistent Lead Negotiator throughout the process. The Licensee will maintain a list of Lead Negotiators for each organization.
* One goal of the collaborative discussions is to reach consensus on a comprehensive package of proposed new PM&E Measures for inclusion in the Draft Application for New License (October 2010). Since topic-specific PM&E discussions are scheduled to occur from mid-2009 to mid-2010, all agreements on topic-specific issues will be considered tentative until the Plenary has reached consensus on a comprehensive package of proposed new PM&E Measures.
* Another goal of the collaborative discussions is to reach consensus on FERC Non-Jurisdictional Agreements and Administrative Provisions. The purpose of the negotiations is to reach a Comprehensive Collaborative Agreement among the Relicensing Participants on FERC Jurisdictional PM&E Measures, FERC Non-Jurisdictional Agreements, and Administrative Provisions prior to the submittal of the Draft Application for New License.
* The collaborative process is based on reaching consensus on proposed PM&E Measures within the specified timeframe identified in the FERC–approved Revised Relicensing Process Schedule for the MFP.
* If collaborative agreement is reached on a comprehensive package of proposed PM&E Measures by the Plenary, then the Licensee will file a Draft License Application in October 2010 with FERC that incorporates the proposed PM&E Measures and associated Rationale Statements into the recommended preferred alternative. The Draft License Application will accurately identify the process used and Plenary participants involved in obtaining consensus on the proposed PM&E Measures.
* As previously noted, it is the goal of the Licensee to reach agreement on proposed PM&E Measures with all Relicensing Participants prior to submittal of a Draft License Application in October 2010. If consensus is not reached, then the Licensee will file a Draft License Application with FERC that includes a preferred alternative that identifies new PM&E Measures proposed by the Licensee. The Licensee’s preferred alternative in the Draft Application may include those PM&E Measures that were tentatively agreed upon by the Licensee and the other Relicensing Participants, as well as, the Licensee’s proposal for those PM&E Measures that were not collaboratively agreed upon by the Relicensing Participants. Until a Comprehensive Collaborative Agreement is reached, neither the Licensee nor the Relicensing Participants will characterize PM&E Measuresas tentative agreements in any filing with FERC without the agreement of Relicensing Participants.
* If a Comprehensive Collaborative Agreement has not been reached at the time the Draft or Final License Application is filed, the Licensee will continue to attempt to reach collaborative agreement with Relicensing Participants.
* If consensus is subsequently reached on PM&E Measures after the submittal of the Draft Application, then these new PM&E Measures would be provided to FERC and fully documented in the Final Application. Any disagreement with the Licensee’s preferred alternative, or alternative PM&E Measures proposed by other Relicensing Participants, will be fully documented by the Licensee in the Draft and Final Application for New License.
* If consensus is reached with Relicensing Participants after submittal of the Final Application, the Licensee will file an amended License Application reflecting PM&E Measures included in the Comprehensive Collaborative Agreement.

## Attendance at Meetings

Relicensing Participants are expected to make a good faith effort to attend or have a representative attend every Plenary meeting and each TWG, and subgroup meeting in which the participant is active. If a Relicensing Participant is unable to attend or have a representative attend a meeting, then the Relicensing Participant will make a good faith effort to provide to the Licensee any input at least two working days prior to the meeting.

Relicensing Participants unable to attend a meeting may request to receive all materials distributed and may provide written comments to the Licensee for consideration by the Relicensing Participants.

## Caucus

Any Relicensing Participant may call for a caucus at any time during any meeting. Relicensing Participants may caucus between meetings. Relicensing Participants should report that they met and, if possible, provide details of the caucus, or disclose any agreements that were reached.

## Preparation

Relicensing Participants are expected to make a good faith effort to read background information provided before each meeting and to be prepared to effectively discuss topics on the meeting agenda.

# Documents

## Types of Documents

FERC’s regulations identify a number of documents required for the ILP. The ILP regulations stipulate that some of the documents are the responsibility of FERC and some are the responsibility of the Licensee. The Licensee anticipates that there will also be other informal documents generated during the course of the Relicensing.

### FERC’s Documents

For documents issued by FERC, the Licensee anticipates that FERC will distribute these documents in accordance with its Updated Protocols. FERC has indicated it will use its FERC Project No. 2079 Mailing List for such distributions. The Licensee anticipates that all documents issued or received by FERC will be posted and publicly available in the “eLibrary” on FERC’s website at [www.ferc.gov](http://www.ferc.gov/). Click on “Documents and Filing,” “eLibrary,” then “General Search.” The website provides further instructions for obtaining documents.

Each Relicensing Participant can register to receive a notice each time FERC posts a document to its website regarding the Relicensing. To register, go to FERC’s website at [www.ferc.gov](http://www.ferc.gov/). Click on “Documents and Filing,” then “eSubscription.” The website provides further instructions.

### Licensee’s Documents

The Licensee anticipates using electronic filing whenever possible for documents it files with FERC, and anticipates distributing such documents by e-mail to the Licensee’s FERC Project No. 2079 Interested Parties E-Mailing List or hard copy to the Licensee’s FERC Project No. 2079 Interested Parties Mailing List (the distribution will also go to FERC’s Project No. 2079 Service List after the License Application is accepted). The Licensee anticipates that it will also use e-mail for distribution of informal documents it initiates. The Licensee anticipates that it will post on the Relicensing website all public documents it sends or receives regarding the Relicensing.

### Other Participants’ Documents

The Licensee anticipates that most Relicensing Participants will use electronic filing for documents they file with FERC and will distribute such documents by e-mail to the Licensee’s FERC Project No. 2079 Interested Parties E-Mailing List. Whenever possible, hard copies of documents filed with FERC should be made to FERC’s Project No. 2079 Mailing List (the distribution will go to FERC’s Project No. 2079 Service List after the License Application is filed). The Licensee anticipates that all documents received by FERC will be posted and publicly available in the eLibrary on FERC’s website at [www.ferc.gov](http://www.ferc.gov/). The Licensee anticipates that most Relicensing Participants will use e-mail for distribution of informal documents they initiate.

### Public Review File

The Licensee shall maintain a Public Review File that constitutes the formal written record of the Relicensing process. The Public Review File will include copies of written correspondence, summaries of all Plenary Group and TWG meetings, study plans and reports, status reports, contact logs, decision logs, and other documents submitted for inclusion in the formal record. The public file will not contain draft PM&E Measures or tentative agreements reached by the Relicensing Participants during the PM&E Development Phase of the Relicensing.

The Licensee will document all action items and critical decisions of Relicensing Participants and post them on the website so that Relicensing Participants can track the decision-making and actions. However, tentative decisions reached during PM&E discussions will not be posted on the Project website. The action items and decisions will be reviewed at the end of each meeting.

The Licensee will document oral communications for significant consultation activities (i.e., teleconferences) and information requests.

The Public Review File will be made available at the following locations for public review:

* In electronic format, at the Licensee’s Hydro Relicensing web page, accessible through  [http://relicensing.pcwa.net](http://www.relicensing.pcwa.net/).
* In paper format, at the Licensee’s Resource Library, located at the PCWA Business Center 144 Ferguson Road, Auburn, California.

FERC’s website will also have formally submitted documents. Any interested party may submit comments and other materials to the Licensee and FERC for inclusion in the Public Review File. All written and electronic communications that an interested party would like to include in the Public Review File for the Middle Fork American River Relicensing must be sent to both the Licensee and FERC.

Written comments to FERC should be mailed to FERC’s Secretary of the Commission (not FERC’s staff assigned to the Relicensing) at:

Kimberly D. Bose, Secretary   
Nathaniel J. Davis, Sr., Acting Deputy Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Comments can also be electronically filed on FERC’s website at [www.ferc.gov](http://www.ferc.gov/). All material submitted for inclusion in the formal record must clearly display the following information on the first page: Middle Fork American River Project, Project No. 2079 Formal Communication. Relicensing Participants should provide all material in electronic format, to the extent reasonably possible, to allow the material to be posted promptly on the Licensee’s Relicensing website. Material may be submitted in both electronic and paper format, if appropriate. Written comments received by FERC will become part of the official record for the MFP and be posted and publicly available in the eLibrary on FERC’s website.

## Single-Text Approach

Participants in Plenary, TWGs and Subgroups meetings will use a single-text approach for development of important, decision-based documents such as the Updated Protocols, study plans, proposed management and monitoring plans, proposed license articles, and agreements. All comments by the Relicensing Participants on a given document under consideration in or among the Plenary, TWGs, and Subgroups will be made on the actual document in question, using track/edit changes if possible, such that the comments can easily be understood, shared, and integrated into a revised text. Each version of the text shall be clearly labeled. Alternatively, a group may elect to jointly edit a document during a meeting, with all Relicensing Participants offering comments during the session.

The Licensee will maintain a cumulative record of the decisions reached on a given document. Documents will include a footer, the title of the document, page numbers, date of origination, date of revision, version number, and initials of last person who has edited the document.

# Confidentiality

Some information developed under the ILP may be confidential under California or applicable law. For example, information on Native American resources, locations of sensitive environmental and cultural resources, and engineering drawing of Project facilities are considered confidential material with restrictions on their distribution. It is the responsibility of the Relicensing Participant providing confidential information under applicable law to identify the information as confidential in advance of disclosure and inform the group.

The Licensee’s approach is to provide an open and transparent process acknowledging that confidentiality agreements with the tribes on certain cultural resource issues as well as FERC’s regulations regarding the distribution of Critical Energy Infrastructure Information (CEII) must be honored.

# Personal Conduct

## Respect for Participants

The personal integrity, values, and legitimacy of the interests of each Relicensing participant are expected to be respected by all other Relicensing Participants. In addition, each Relicensing Participant agrees to adhere to the ground rules provided and reviewed by the Facilitator at each meeting.

## Commitments

Commitments will not be made lightly and will be kept.

## Communicating Interests

Every Relicensing Participant is responsible for communicating their interests and the interests of the governmental agency or non-governmental organization they represent on topics under consideration. It is incumbent upon each Relicensing Participant to state his or her interests. Voicing these interests is essential to enable meaningful dialogue and full consideration of different points of view. Resource information germane to assessment of potential Project impacts and development of potential PM&E Measures is expected to be shared with the other Relicensing Participants.

## Good Faith

All Relicensing Participants are expected to make a good faith effort to achieve Relicensing objectives through use of the ILP.

# Communications

## Communications Among Relicensing Participants

All Relicensing Participants are free to informally communicate with each other; however, Relicensing Participants are encouraged to share relevant communications among all Relicensing Participants as appropriate.

Other than verbal communications at meetings, e-mail will be the primary means of formal communication among the Relicensing Participants. The initiator of any such e-mail is responsible for ensuring that it is sent to all Relicensing Participants, as applicable.

The Licensee anticipates that telephone calls among Relicensing Participants will be treated informally, with no specific documentation.

## Communications with FERC

Written comments to FERC should be mailed to FERC’s **Secretary of the Commission** (not FERC’s staff assigned to the Relicensing) or electronically filed on FERC’s website at [www.ferc.gov](http://www.ferc.gov/). Written comments received by FERC will not be distributed but will become part of the official record for the MFP and be posted and publicly available in the eLibrary on FERC’s website. Each participant in the Relicensing can register to receive a notice each time FERC posts a document to its website regarding the Relicensing (see Section 8.1.1, FERC’s Documents).

## Media Communications

Relicensing Participants may communicate with the media regarding their own views, interests and positions, but will avoid making statements characterizing other Relicensing Participants’ interests. Relicensing Participants will promptly inform the Licensee and other Relicensing Participants of relevant communications with the media. The Facilitator will not make public statements, except at the request of the Relicensing Participants. Relicensing Participants will make every effort to notify the Licensee and other participants prior to making statements to the media, or responding to media requests.

During the PM&E Measure Development Phase, Relicensing Participants are strongly encouraged to avoid discussions with the media regarding draft PM&E Measures proposed by Relicensing Participants or tentative agreements reached by the parties until the Plenary has reviewed and reached consensus on the overall PM&E package.

# Compliance with Updated Protocols

Each Relicensing Participant is expected to voluntarily abide by these Updated Protocols. The Licensee does not propose that participation in the Relicensing is contingent upon formal acceptance of these Updated Protocols, but that the Licensee, Federal and state resource agencies, local governments, non-government organizations, Native American tribes, members of the public, and others participating in Relicensing voluntarily abide by the letter and intent of these Updated Protocols. Violations of the Updated Protocols by any Relicensing Participants will be brought to the attention of the Plenary. The Plenary will decide the appropriate action to be taken.

**FIGURE**

****

****

**ATTACHMENT A**

**Supplemental Stakeholder Participation Statement**

**SWRCB Collaborative Process Participation Statement**

The State Water Resources Control Board (SWRCB) and the nine Regional Water Quality Control Boards are the principal state agencies responsible for administering the state’s water quality control program (Wat. Code, §§ 13000-14958.) This includes responsibility to grant, waive, or deny water quality certification as provided for under section 401 of the federal Clean Water Act (Wat. Code, § 13160; see generally 33 U.S.C. § 1341.) The SWRCB issues water quality certification before a license to operate a hydropower project may be issued by the Federal Energy Regulatory Commission (FERC). In addition, the SWRCB is the state agency responsible for administering surface water rights throughout the state (Wat. Code, §§ 1000-5976.)

Where the SWRCB’s regulatory approval is required, the SWRCB has a legal duty, independent of any arguments raised by parties to the proceeding before the SWRCB, to assure that the requirements for that approval are satisfied. In this case, the SWRCB has an independent statutory duty under the Clean Water Act and the applicable regional water quality control plan to ensure that the operation of the Middle Fork American River Project (FERC No. 2079) will not adversely affect water quality or the beneficial uses of the affected lakes and stream reaches within the Middle Fork American River drainage.

The SWRCB agrees to participate in the development of information regarding the Middle Fork American River Project that may lead to a settlement among the interested parties. It is the policy of the SWRCB to promote voluntary settlements among the parties to adjudicative proceedings before the SWRCB. It is also the policy of the SWRCB to assist applicants and members of the public by making available information about the requirements of the programs it administers. The SWRCB will participate in the collaborative process with a view towards encouraging settlement among the parties and other persons interested in proceedings before the SWRCB, and providing applicants, protestants, and other interested persons with information concerning the requirements applicable to SWRCB approvals.

While the SWRCB can provide information that will help guide the parties towards a settlement that is likely to obtain the necessary regulatory approvals, however, the SWRCB cannot make a prior commitment to the outcome of any regulatory approval that must be issued by the SWRCB. The SWRCB acts in an adjudicative capacity when it acts on a request for water quality certification, water right application, change petition, or other water right approval that may be required for or requested in connection with a proposed project. The SWRCB must be an impartial decision-maker, avoiding bias, prejudice or interest, in any adjudicative proceedings conducted in accordance with the SWRCB’s regulatory approvals. Consistent with its adjudicative responsibilities, including its obligation to consider any arguments that may be raised or information provided by parties to a SWRCB proceeding, the SWRCB cannot execute any settlement agreement or make any other commitment that would be binding on the SWRCB as part of its action on a request for water quality certification or other necessary SWRCB permit, license, or other regulatory approval.

**ATTACHMENT B**

**Schedule for Development of New License Terms and Conditions (by topic)**

